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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,700	02/07/2006	Volker Von Holt	10191/3804	1596
26646 7590 02/02/2010 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
BURCH, MELODY M				
ART UNIT		PAPER NUMBER		
3657				
MAIL DATE		DELIVERY MODE		
02/02/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,700

Applicant(s)

VON HOLT ET AL.

Examiner

Melody M. Burch

Art Unit

3657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/10 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 7, 8, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4048613 to Ito et al. in view of DE-4310354 (DE'354) and further in view of US Patent 5549369 to Rump et al.

Ito et al. disclose a method for automatically initiating an emergency braking sequence comprising: performing a preliminary warning braking in a motor vehicle as disclosed in col. 4 lines 10-13.

Ito et al. disclose the limitation of later initiating an emergency braking as disclosed in col. 4 lines 11-13, but lack the limitation of determining an achievable

vehicle deceleration during the preliminary warning braking, and varying a time of initiating the emergency braking as a function of the determined achievable vehicle deceleration.

DE'354 teaches in the admitted prior art section of the instant specification pg. 1 line 19 – pg. 2 line 3 the use of determining information such as the coefficient of friction of the roadway on which the vehicle travels during a warning braking and using the information to adjust a setpoint distance based on the determined brakability and stopping distance of the vehicle which is a function of the achievable vehicle deceleration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method for automatically initiating an emergency braking sequence of Ito et al. to have used determined information gained during the warning braking to vary the time of initiating the subsequent emergency braking, in view of the teachings of DE'354, in order to increase driving safety according to the particular road conditions.

Ito et al., as modified, describe the invention as set forth above but lack the limitation of increasing the braking force until at least one wheel of the motor vehicle locks reaching a maximum slip limit.

Rump et al. teach in claim 10 the method of increasing the braking force on at least one wheel of the motor vehicle to a slip limit during a warning or ABS braking as opposed to non-ABS braking situation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Ito et al., as modified, to have increased a braking force until at least one wheel locks reaching a maximum slip limit, as taught by Rump et al., in order to provide a means of determining when to trigger an automatic braking operation.

4. Claims 7, 8, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4048613 to Ito et al. in view of US Patent 5297861 to Morita et al. and further in view of US Patent 5549369 to Rump et al.

Ito et al. disclose a method for automatically initiating an emergency braking sequence comprising: performing a preliminary warning braking in a motor vehicle as disclosed in col. 4 lines 10-13.

Ito et al. disclose the limitation of later initiating an emergency braking as disclosed in col. 4 lines 11-13, but lack the limitation of determining an achievable vehicle deceleration during the preliminary warning braking, and varying a time of initiating the emergency braking as a function of the determined achievable vehicle deceleration.

Morita et al. teach the use of varying or correcting a provisional point in the time of initiating braking on the basis of the vehicle deceleration as given by a determined coefficient of friction in col. 3 lines 2-6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method for automatically initiating an emergency braking sequence of Ito et al. to have varied the time of initiating

braking on the basis of the vehicle deceleration as given by a determined coefficient of friction, in view of the teachings of Morita et al., in order to increase driving safety according to the particular road conditions.

Ito et al., as modified, describe the invention as set forth above but lack the limitation of increasing the braking force until at least one wheel of the motor vehicle locks reaching a maximum slip limit.

Rump et al. teach in claim 10 the method of increasing the braking force on at least one wheel of the motor vehicle to a slip limit during a warning or ABS braking as opposed to non-ABS braking situation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Ito et al., as modified, to have increased a braking force until at least one wheel locks reaching a maximum slip limit, as taught by Rump et al., in order to provide a means of determining when to trigger an automatic braking operation.

5. Claims 7, 8, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto in view of Morita et al. in view of Rump et al.

Sugimoto describes a method for automatically initiating an emergency braking sequence comprising: performing a preliminary warning braking in a motor vehicle, determining an achievable vehicle deceleration during the preliminary warning braking, and varying a time of initiating an emergency braking as a function of the determined achievable vehicle deceleration as disclosed in col. 8 lines 12-49.

Morita et al. teach the use of varying or correcting a provisional point in the time of initiating braking on the basis of the vehicle deceleration as given by a determined coefficient of friction in col. 3 lines 2-6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method for automatically initiating an emergency braking sequence of Sugimoto to have to have varied the time of initiating braking on the basis of the vehicle deceleration as given by a determined coefficient of friction, in view of the teachings of Morita et al., in order to increase driving safety according to the particular road conditions.

Sugimoto, as modified, describes the invention as set forth above but lacks the limitation of increasing the braking force until at least one wheel of the motor vehicle locks reaching a maximum slip limit.

Rump et al. teach in claim 10 the method of increasing the braking force on at least one wheel of the motor vehicle to a slip limit during a warning or ABS braking as opposed to non-ABS braking situation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Sugimoto, as modified, to have increased a braking force until at least one wheel locks reaching a maximum slip limit, as taught by Rump et al., in order to provide a means of determining when to trigger an automatic braking operation to ensure safe vehicle operation.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection using the Morita et al. and Rump et al. references.
7. Applicant's arguments filed 1/12/10 have been fully considered but they are not persuasive. Applicant argues that in DE'354 it is the setpoint distance that is altered to increase driving safety instead of a time of initiating braking. Examiner maintains that the teaching of braking a longer distance away to increase driving safety would have suggested to one of ordinary skill in the brake art that braking longer by shifting the start of braking to an earlier point in time increases driving safety. Accordingly, the rejections using the teachings of DE'354 have been maintained.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb
January 29, 2010

/Melody M. Burch/

Primary Examiner, Art Unit 3657